

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JONAH ZIVANAYI NYEMBA,)	
)	
Petitioner,)	
vs.)	NO. CIV-06-0772-HE
)	
NURIA PRENDES, Field Office Director of)	
Immigration and Customs Enforcement; and)	
DEPARTMENT OF HOMELAND SECURITY,)	
)	
)	
Respondent.)	

ORDER

Petitioner Jonah Zivanayi Nyemba filed a combined emergency petition seeking a writ of habeas corpus and complaint seeking declaratory and injunctive relief. The petitioner seeks to prevent his removal to Zimbabwe by the Department of Homeland Security. Consistent with 28 U.S.C. §636(b)(1)(B), the matter was referred to Magistrate Judge Bana Roberts. She has issued a Report and Recommendation in which she concluded that, to the extent the petitioner is challenging his final order of removal, the court lacks jurisdiction under the REAL ID Act of 2005. She also found that the court lacks jurisdiction over the habeas petition/complaint to the extent the petitioner is challenging his continued detention, as he is, in effect, challenging his order of removal. The magistrate judge recommends that the court grant the motion to dismiss filed by the respondent and dismiss the habeas petition/complaint without prejudice.


The court concurs with the magistrate judge's analysis and finding that jurisdiction over the petitioner's claims lies in the appellate, rather than the district, court. The court also

notes that the petitioner failed to object to the Report and Recommendation and thus waived his right to appellate review of the legal and factual issues it addressed. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996). *See* 28 U.S.C. §636(b)(1)(C); LCvR72.1(a).

Accordingly, the court adopts Magistrate Judge Robert's Report and Recommendation, grants the respondent's motion to dismiss [Doc. #7], and dismisses the habeas petition/complaint without prejudice

IT IS SO ORDERED.

Dated this 24th day of October, 2006.



JOE HEATON
UNITED STATES DISTRICT JUDGE